

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 1, 2004**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert Kirby, Board member, presided. No other Board members were present.

Doug Schroder and Peter Oppen appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

1. James Hailey and
Roy Rogers Industries Inc.
File Number 2003-02126 (RF)

James Hailey – C
Pamela Hailey – C
Roy Rogers – R
Ben Lacy – R Atty

The meeting adjourned at 5:00 p.m.

BOARD FOR CONTRACTORS



Mark D. Kinser, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: James Hailey (Claimant) and Roy Rogers Industries Inc. (Regulant)

File Number: 2003-02126
License Number: 2705027204

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On May 11, 2003, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to James and Pamela Hailey ("Claimant") and Roy Rogers Inc. ("Regulant"). The Notice included the Claim Review, which contained the facts regarding the recovery fund claim. The certified mail, sent to the Claimants and the Regulant, was signed for and received by both parties.

On July 1, 2004, an Informal Fact-Finding Conference ("IFF") was convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: James and Pamela Hailey, Claimants; Roy Rogers, Respondent; Ben Lacy, Attorney for Roy Rogers Inc; Peter Oppen, Staff Member; Doug Schroder, Staff Member; and Robert Kirby, Presiding Board Member

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Recovery Fund claim:

During the IFF, the Regulant made the claim that this was a real estate matter and not a construction contract issue. In a prior disciplinary case, see Final Order #2002-0228, the Board reviewed the contract between the parties at issue in this case and found "clear and convincing evidence" that the actions of Roy Rogers Industries, Inc. violated the Board's regulations. Therefore, I find that the requirement of Virginia Code Section 54.1-1120(A) (4) has been satisfied and this contract can be subject to a Contractor Recovery Fund claim.

During the IFF, the Regulant made the claim that this was a mere breach of agreement. However, I find that the Regulant repeatedly made and broke promises to provide the septic field required under his contract and under the Covenants. The repeated failure to honor such commitments falls under the definition of "improper and dishonest conduct."

CLAIM REVIEW

TO: Board for Contractors

FROM: Victoria S. Traylor
Legal Assistant

DATE: February 2, 2004

RE: In the matter of the Virginia Contractor Transaction Recovery Act Claim of James & Pamela Hailey (Claimants) and Roy Rogers Industries, Inc. t/a Roy Rogers Industries, Inc. (Regulant)
File Number: 2003-02126

BACKGROUND

On June 17, 2002, in the Hanover County General District Court, James R. and Pamela M. Hailey obtained a Judgment against Roy Rogers Industries, Inc., in the amount of \$8,857.50, plus interest and \$60.00 costs.

The claim in the amount of \$10,019.50 was received by the Department of Professional and Occupational Regulation on February 6, 2003.

CLAIM FILE INFORMATION

Section 54.1-1120(A) requires the claimant to obtain a final judgment in a court of competent jurisdiction in the Commonwealth of Virginia against any individual or entity which involves improper or dishonest conduct.

The Warrant in Debt recites "Defendant responsible for installing drain field of property-Plaintiffs requesting reimbursement" as the basis for the suit. The block designated "Other" has been marked.

Section 54.1-1120(A) also requires the transaction occurring during a period when such individual or entity was a regulant and in connection with a transaction involving contracting.

The claimants did contract with the regulant.

The Board issued Class A License Number 2705027204 to Roy Rogers Industries, Inc., t/a Roy Rogers Industries, Inc., on March 6, 1995. The license was suspended on April 12, 2002. The claimants entered into a written contract with Roy Rogers Industries on July 13, 1999 for the construction of a house.

Section 54.1-1120(A)(1) provides whenever action is instituted against a regulant by any person, such person shall serve a copy of the process upon the Board.

The Contractors Board was not served prior to the claim being filed.

Section 54.1-1120(A)(2) states a copy of any pleading or document filed subsequent to the initial service process in the action against a regulant shall be provided to the Board.

The Board did not receive pleadings or documents prior to the claim being filed.

Section 54.1-1120(A)(3) requires a verified claim to be filed no later than twelve months after the judgment becomes final.

A Judgment was entered on June 17, 2002. The claim was received on February 6, 2003.

Section 54.1-1120(A)(4) states the claimant shall be an individual whose contract with the regulant involved contracting for the claimant's residence.

The claimants entered into a written contract with Roy Rogers Industries for the construction of a house.

Section 54.1-1120(A)(5) prohibits recovery when the claimant is an employee of such judgment debtor, vendor of such judgment debtor, another licensee, the spouse or child of such judgment debtor nor the employee of such spouse or child, or any financial or lending institution nor anyone whose business involves the construction or development of real property.

On Question Number 6 of the Claim Form, the claimant was asked: Are you a vendor of the regulant (contractor)? Are you an employee, spouse or child of the regulant (contractor) or an employee of such spouse or child? Do you hold, or have you ever held, a Virginia Class A or Class B State Contractor's license or registration? Do you operate as a financial or lending institution? Does your business involve the construction or development of real property? Claimant answered "No."

Section 54.1-1120(A)(6) states no directive from the fund shall be entered until the claimant has filed with the Directors Office a verified claim containing the following statements: (a) that the claimant has conducted debtor's interrogatories to determine whether the judgment debtor has any assets which may be sold or applied in satisfaction of the judgment; (b) a description of the assets disclosed by such interrogatories; (c) that all legally available actions have been taken for the sale, or application of the disclosed assets and the amount

realized therefrom; and (d) the balance due the claimant after the sale or application of such assets.

Debtor's interrogatories were conducted. No assets were revealed.

Section 54.1-1120(A)(7) states a claimant shall not be denied recovery from the Fund due to the fact the order for the judgment filed with the verified claim does not contain a specific finding of "improper and dishonest conduct." Any language in the order that supports the conclusion that the court found that the conduct of the regulant involved improper or dishonest conduct may be used by the Board to determine eligibility for recovery from the Fund.

The Warrant in Debt recites "Defendant responsible for installing drain field of property-Plaintiffs requesting reimbursement" as the basis for the suit. The block designated "Other" has been marked.

In the Affidavit of Facts dated February 20, 2003 the claimants assert that the regulant was to expend the funds for the installation of a drain field on the claimants' property. The claimants were forced to pay for the installation of the drain field.

Section 54.1-1120(B) requires if the regulant has filed bankruptcy, the claimant shall file a claim with the proper bankruptcy court. If no distribution is made, the claimant may then file a claim with the Board.

On Question Number 5 of the Claim Form, the claimant was asked if, to their knowledge, the regulant had filed for bankruptcy? In response to this question, the claimant responded, "No."

Section 54.1-1123(C) excludes from the amount of any unpaid judgment any sums representing interest, or punitive or exemplary damages.

The Claim Form does not include interest or damages.

I also find that all other requirements of the Recovery Fund statute have been satisfied by the Claimants.

Therefore, I recommend that the recovery fund claim be paid in the amount of \$10,000.00.

By: _____

Robert Kirby
Presiding Board Member

Board for Contractors

Date: _____

M. Informal Fact-Finding Conference Forms - Document2 (7/04)

**STATE AND LOCAL GOVERNMENT
CONFLICT OF INTEREST ACT**

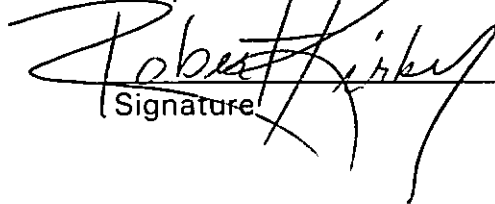
**TRANSACTIONAL DISCLOSURE STATEMENT
for Officers and Employees of State Government**

1. Name: Robert Kirby
2. Title: Hearing Officer
3. Agency: Board for Contractors
4. Transaction: Informal Fact-Finding Conferences on July 1, 2004
5. Nature of Personal Interest Affected by Transaction: _____

6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

(b) I am able to participate in this transaction fairly, objectively, and in the public interest.


Signature

7-01-2004

Date